

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION**

TUAN WILLIAMS,

Plaintiff,

vs.

**STATE FARM FIRE AND
CASUALTY CO.,
Defendant.**

CIVIL ACTION NO. 10-CV-11435

DISTRICT JUDGE GERALD E. ROSEN

MAGISTRATE JUDGE MONA K. MAJZOUN

**ORDER FOR ANTOINE BURTON TO SHOW CAUSE FOR FAILURE TO OBEY
SUBPOENA**

Before the Court is Defendant's Motion To Show Cause Re: Deposition of Antoine Burton filed on November 24, 2010. (Docket no. 24). There was no Response filed within the time for responding. (Docket no. 27). The motion was referred to the undersigned. (Docket no. 26).

On October 27, 2010 Defendant served a subpoena for attendance at a deposition on non-party Antoine Burton¹ noticing the deposition for appearance without documents on November 16, 2010 at 10:00 a.m. at the law offices of Patrick, Johnson & Mott, P.C., 27777 Franklin Road, Suite 1400, Southfield, Michigan 48034. (Docket no. 24-2 p. 10 of 30).

Mr. Burton did not appear on November 16, 2010. Defendant alleges that it contacted Mr. Burton and served a second Subpoena and Re-Notice of Taking Deposition on November 16, 2010 for a rescheduled deposition on November 19, 2010 at 10:00 a.m. at the same location pursuant to

¹ The address on the October 27, 2010 Return of Service is 15722 Stansbury St., Detroit, Michigan 48227. The address on Defendant's letterhead dated November 16 and November 19, 2010 lists Mr. Burton's address as 15723 Stansbury. (Docket no. 24-2, pp. 16, 22, 25 of 30). The 15722 address appears to be an error in the return of service and is elsewhere consistently listed as 15723 Stansbury throughout the remaining documents including the subpoena. Defendant also alleges that it communicated with Mr. Burton following the October 27, 2010 service.

Defendant's "discussions" with Mr. Burton. (Docket no. 24-2 p.16 of 30). Mr. Burton failed to appear for deposition on November 19, 2010 and Defendant rescheduled and re-noticed the deposition for November 23, 2010. Again, Mr. Burton failed to appear for deposition. Defendant provided a copy of the Certified Mail Receipt and PS Form 3811 which indicates that the subpoena addressed to Mr. Burton was accepted at the address 15723 Stansbury, Detroit, Michigan 48227. (Docket no. 24-2, p. 30 of 30).

Plaintiff alleges that Mr. Burton was with him on the night of the fire at issue in this action. Mr. Burton's testimony is relevant. Fed. R. Civ. P. 26(b)(1). The place of deposition is approximately twelve miles from Mr. Burton's residence and is within the limits of Fed. R. Civ. P. 45(c)(3)(A)(ii). Mr. Burton did not move to quash or otherwise modify the subpoena. Defendant therefore asks the Court to order Mr. Burton to show cause why he should not be held in contempt for failing to obey the subpoena. Fed. R. Civ. P. 45(e). Rule 45(e), Fed. R. Civ. P., provides that the "issuing court may hold in contempt a person who, having been served, fails without adequate excuse to obey the subpoena." Antoine Burton will therefore be ordered to appear and show cause why he should not be held in contempt of court for his failure to appear as directed.

IT IS THEREFORE ORDERED that Antoine Burton appear on **Wednesday, March 30, 2011 at 2:00 p.m.**, in Room 642 of the Theodore Levin United States Courthouse, 231 W. Lafayette Blvd., Detroit, Michigan **and show cause why he should not be held in contempt of court for his repeated failure to appear for deposition** on November 16, November 19 and November 23, 2010.

Pursuant to Fed. R. Civ. P. 72(a), the parties have a period of fourteen days from the date of this Order within which to file any written appeal to the District Judge as may be permissible under 28 U.S.C. 636(b)(1).

Dated: March 16, 2011

s/ Mona K. Majzoub
MONA K. MAJZOUB
UNITED STATES MAGISTRATE JUDGE

PROOF OF SERVICE

I hereby certify that a copy of this Order to Show Cause was served upon Antoine Burton at 15723 Stansbury, Detroit, Michigan 48227 and Counsel of Record on this date.

Dated: March 16, 2011

s/ Lisa C. Bartlett
Case Manager